LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JAN 4 1971
E. ROBERT SEAVER, CLERK

In The

SUPREME COURT of the UNITED STATES

October Term, 1970

No. 1004

Clifford P. Hansen, Petitioner,

vs

Anne Lamm Haagensen, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

Thomas C. Lynch
109 1/2 W. Water Street
Decorah, Iowa 52101
Counsel for Respondent.

INDEX

	Page
Questions Presented	1
Respondent's Statement of the Case	1
Reasons to Deny Writ	3
Conclusion	8

TABLE OF AUTHORITIES

Text Book References:

50 C.J.S. Judgments, §893	7
McCormick on Evidence, §323	6
Restatement of the Law 2d, Conflict of Laws, Chapter 4	5
Restatement of the Law, Judgments, Section 14	5

Cases:

Adam v. Saegner (1938) 303 U.S. 59; 58 S. Ct. 454; 82 L. Ed. 649	4,6
Griffin v. Griffin, 327 U.S. 220; 66 S. Ct. 556; 90 L. Ed. 635	4,6
McGee v. International Life Ins. Co., (1957) 355 U.S. 220; 78 S. Ct. 199; 2 L. Ed. 2d 223	4
Simonds v. Norwich Union Indemnity Co. 73 F. 2d 412	6
Treinies v. Sunshine Mining Co. (1939) 308 U.S. 66; 60 S. Ct. 44; 84 L. Ed. 85	5

In The
SUPREME COURT of the UNITED STATES

October Term, 1970

No. 1004

Clifford F. Hansen, Petitioner,

vs

Anne Lamm Haagensen, Respondent,

BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA

The respondent, Anne L. Haagensen of Decorah, Iowa, herewith submits her Brief in Opposition to said petition on the grounds that: (1) this case presents no substantial federal question, (2) the decision of the Iowa Supreme Court is in accord with prior applicable decisions of this court, and (3) this case involves no principles of general importance as distinguished from the consequences to the parties themselves.

RESPONDENT'S STATEMENT OF THE CASE

Because the Statement of the Case submitted by the petitioner omits vital portions of the record essential to comprehension of this

case, and includes much extraneous matter not found in the record of this case below, the respondent is compelled to submit her version of a Statement of the Case.

Petitioner, as plaintiff, obtained a Minnesota Quasi in Rem judgment on December 2, 1959, based on substituted service on the respondent in the State of Iowa, in the sum of $10,350.00. As a part of this judgment, the Minnesota Court found it then "became vested with jurisdiction to the extent of property so attached and garnished". (Petitioner's Brief, A35, A45). Subsequent to this judgment, respondent argued her Special Appearance alleging inter alia that she owned no property in Minnesota which could be the subject of an attachment. (Said motion was not ruled upon until 17 months later when it was overruled by an Order Nunc Pro Tunc). Four months after the December, 1959, judgment, a sheriff's sale of real estate owned by a co-defender sister of the respondent was held and the proceeds applied to the said Quasi in Rem judgment (Petitioner's Brief, A46).

The case remained dormant thereafter for 17 months, when a motion was filed supported by plaintiff's own affidavit "for a judgment for the amount remaining due and owing" (A46). The next day an ex parte judgment was rendered without any form of notice to the defendant-respondent. The petitioner then sought an Iowa

in personam judgment based on the Minnesota judgment, which was denied by the Iowa District and Supreme Courts because of their finding of a lack jurisdiction of the person of the defendant to support the decree of the Minnesota court.

REASONS TO DENY WRIT

The petition for writ of certiorari appears to be grounded upon a claimed failure of Iowa to extend full faith and credit to a Minnesota judgment as required by Article VI, Section 1 of the U.S. Constitution. In order for the petitioner to have benefit of this protection, there must be a showing that the judgment was rendered in a proceeding not wanting in due process of law. This issue was decided adversely to the petitioner in all courts below. (A53; A40). Hence, the decision petitioner seeks to have reviewed involves no substantial federal question. A purported personal judgment secured without any form of notice to the defendant has no standing to seek the benefit of the Full Faith and Credit clause of the U.S. Constitution. The instant case involves strictly local issues decided on fundamental procedural due process principles.

The complete record of this case if made available to this honorable Court would show that the petitioner first secured a quasi in rem judgment in Minnesota and exhausted all

of his remedies by selling all of the attached Minnesota property owned by a co-defendant sister of this respondent. When those proceeds were applied to said judgment, it constituted a final disposition of the litigation then pending before the Minnesota court. (A52). The court costs were paid in full and for all legal purposes the case was finally disposed of. But 17 months thereafter the petitioner sought to resurrect the case by affidavit. Said affidavit was filed one day and the judgment was entered the next - all without any form of notice to the respondent.

The Iowa Supreme Court was clearly mindful of the Full Faith and Credit aspects of the instant case (See A50-53 of Petitioner's Brief). It followed prior holdings of this court that the judgment of a sister state's court may be collaterally attacked if the assertion of jurisdiction over the defendant violated the due process clause of the Fourteenth Amendment of the U.S. Constitution.

Adam v. Saenger (1938) 303 U.S. 59, 68; 58 S. Ct. 454; 82 L. Ed. 649.
McGee v. International Life Ins. Co. (1957) 355 U.S. 220, 222; 78 S. Ct. 199; 2 L. Ed. 2d 223.
Griffin v. Griffin, 327 U.S. 220, 228; 66 S. Ct. 556, 560; 90 L. Ed. 635, 640.

But even if jurisdiction could have been constitutionally assumed by the Minnesota court, the judgment is open to collateral attack where the sister state's internal law has not authorized the exercise of personal jurisdiction to the full constitutional extent attempted here.

> Treinies v. Sunshine Mining Co. (1939) 308 U.S. 66, 78; 60 S. Ct. 44; 84 L. Ed. 85.
> Restatement of the Law 2d, Conflict of Laws, Ch. 4, Introductory Notes 39 and 40.
> Restatement of the Law, Judgments, Section 14, Comment b.

The record is clear that the petitioner at no time offered any proof that Minnesota law authorized the kind of procedure utilized to obtain the judgment sued on. The Iowa Supreme Court comment on this failure (A49):

> "We know of no rules and none were called to our attention which would permit a subsequent appearance of this kind to be considered retroactive, or allow a personam judgment for the amount of the quasi in rem judgment unsatisfied by the sale of property attached and levied upon, without a reopening and due notice thereof."

Proof of applicable Minnesota law in Iowa courts is a matter of Iowa law.

> Adam v. Saenger (1938) 303 U.S. 59; 58 S. Ct. 454; 58 L. Ed. 649.

And in the absence of proof of applicable Minnesota law by the petitioner, the Iowa court may take judicial notice of the foreign law. McCormick on Evidence, Section 323. The Iowa court did refer to Minnesota law as a basis for its decision where it stated (A52-53):

> "Our examination of Minnesota law reveals that a judgment rendered in its court is final and conclusive until set aside or reversed. Even an appeal does not vacate or annul the judgment and the matter determined remains res judicata until it is modified or reversed. Simonds vs. Norwich Union Indemnity Co., 73 F. 2d 412, certiorari denied.
>
> In any event, it is plain here that a new judgment in personam purporting to cut off all available defenses could not be rendered on any theory of the State's power over defendant without some form of notice, which was not given subsequent to the in rem judgment. Griffin vs. Griffin, 327 U.S. 220,

228, 66 S. Ct. 556, 560, 90 L. Ed. 635, 640."

The Minnesota judgment of December 2, 1959, specifically found that it had only quasi in rem jurisdiction over the respondent which constitutes res judicata on the quality of jurisdiction had by the Minnesota court; this finding has never been modified or reversed. (A45).

A basic essential of Constitutional Due Process is notice to the party defendant. The courts below found and the petitioner concedes no notice was given. (A49). Petitioner's assertion of in personam jurisdiction is grounded upon an alleged general appearance which he avers resulted from giving retroactive effect to a special appearance argued subsequent to entry of the quasi in rem judgment. Petitioner was unable to produce any Minnesota statute, rule or case holding to substantiate his theory. We can scarcely fault the Iowa Supreme Court for failing to adopt petitioner's theory when neither the legislature nor the courts of Minnesota have yet seen fit to do so. There can be no Full Faith and Credit violation, and hence no substantial federal question, with respect to petitioner's purported judgment entered with fatal jurisdictional defects. 50 C.J.S. Judgments §893.

Petitioner's case involves no legal

principles of general interest or importance to justify the granting of certiorari. The facts and circumstances of the case are peculiar to the parties themselves, and have been thoroughly litigated in the lower courts during its eleven year life span. Cost of that litigation has far exceeded the modest deficiency judgment the petitioner seeks to sustain. In essence, the petitioner by the theory of his case, is seeking to engraft upon Minnesota law a rule of procedure that its courts and legislature have never adopted. Were a writ of certiorari to be granted in the instant case, this honorable court would be called upon to establish that petitioner's theory of jurisdiction is a part of Minnesota procedural law in the face of a clear showing that neither its courts nor its legislature have made it so. No substantial federal question would be involved in such an undertaking.

CONCLUSION

The petitioner through voluminous pleading and citation of authority tends to confuse and obscure the concise holding of the Iowa Supreme Court on a very fundamental jurisdictional defect in his judgment. He has failed throughout to cite a single Minnesota authority to sustain his theory of jurisdiction. Instead, he seeks to use the Full Faith and Credit clause of the U.S. Constitution to shield the fatally defective jurisdictional flaws in

the judgment he seeks to uphold.

Respectfully submitted,

Thomas C. Lynch
109 1/2 W. Water Street
Decorah, Iowa 52101
Counsel for Respondent.